

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Vance Herman,)	
)	
Plaintiff,)	ORDER OF DISMISSAL
)	
vs.)	
)	
James Sayler, et al.,)	Case No. 1:22-cv-203
)	
Defendant.)	

Plaintiff Vance Herman (“Herman”) is an inmate at the North Dakota State Penitentiary. He initiated the above-captioned pro se with the filing of a paid complaint on December 7, 2022. (Doc. Nos. 2, 7). He is endeavoring to sue Warden James Sayler, Dave Krabbenhoft, and Case Manager Steven Bennett for alleged Religious Land Use and Institutionalized Persons Act, equal protection, and Eighth Amendment violations. His claims arise out of an apparent altercation between him and his cellmate, Patrick Budack. He seeks a placement in a minimum security facility and “monetary relief in each of the Defendant’s official capacity only.” (Id.).

The court screened Herman’s complaint as required by 28 U.S.C. § 1915A(a) and concluded that his claim for monetary damages against Defendants in their official capacity was barred by the Eleventh Amendment, his transfer to a different facility was not an available remedy, and that his complaint otherwise failed to state claims for which relief could be granted. (Doc. 6). Recognizing that he is a pro se litigant, the court issued an order on December 22, 2022, that identified his complaint’s deficiencies and afforded him an opportunity either file an amended complaint addressing them or otherwise show cause by January 13, 2023, why this action should not be dismissed. (Id.). At his request, the court extended the show cause deadline until February 13,

2023. (Doc. Nos. 8, 9).

To date Herman has not filed an amended complaint or otherwise responded to the court's December 22, 2022, order. Consequently, for the reasons articulated by the court in its December 22, 2022, order, Herman's claim for monetary damages against Defendants in their official capacities is **DISMISSED** with prejudice and the remainder of his claims are **DISMISSED** without prejudice.

IT IS SO ORDERED.

Dated this 21st day of February, 2023.

/s/ Clare R. Hochhalter
Clare R. Hochhalter, Magistrate Judge
United States District Court